

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SKYLER LUSK, TIA COUNCIL, VIKTORIA
O'BRIEN, AND JUSTIN BYROAD, *on behalf of*
themselves and all other employees similarly situated,

Plaintiffs,

v.

SERVE U BRANDS, INC., INSOMNIA COOKIES,
LLC, AND SETH BERKOWITZ,

Defendants.

STATUS UPDATE

Civil Action No.
17-6451

The attorneys for the above parties have conferred and agreed on the attached notice materials, consistent with the Court's decision at the hearing on November 20, 2018. The proposed notice materials are attached for the Court's reference.

Dated: November 30, 2018.

THOMAS & SOLOMON LLP

By: /s/ Jessica L. Lukasiewicz
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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

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SKYLER LUSK, TIA COUNCIL, VIKTORIA
O'BRIEN, AND JUSTIN BYROAD, *on behalf of*
themselves and all other employees similarly situated,

Plaintiffs,

-against-

SERVE U BRANDS, INC., INSOMNIA COOKIES,
LLC, AND SETH BERKOWITZ,

Defendants.

Civ. No.: 17-cv-6451 (MAT) (MWP)

-----X
If you were a delivery driver at certain Insomnia Cookies stores after July 11, 2014, a lawsuit may affect your rights. The Court has authorized notice of the lawsuit to be provided to a conditionally certified class of delivery drivers employed after July 11, 2014 at Insomnia Cookies stores that had a policy to pay delivery drivers a guaranteed rate less than \$12.00/hr and who have not executed a Mediation and Class Action Waiver Agreement, or if they have executed the agreement, opted out of the class action waiver. Insomnia Cookies' records identify you as a current or former delivery driver who meets that criteria.

A court authorized this notice. This is not a solicitation from a lawyer.

- Former employees ("Plaintiffs") of Insomnia Cookies filed a lawsuit against Serve U Brands, Inc., Insomnia Cookies, LLC, and Seth Berkowitz (together "Defendants"). The lawsuit was initially filed on July 11, 2017 against Defendants in the United States District Court for the Western District of New York. Plaintiffs allege that Defendants violated the federal Fair Labor Standards Act ("FLSA") by (1) failing to reimburse delivery drivers for vehicle costs and/or related expenses; (2) failing to provide tip credit notice as required by the FLSA; and (3) improperly excluding mandatory service charges and/or "additional wages" from the regular rate of pay. Defendants deny all of the Plaintiffs' allegations of wrongdoing and deny that they are liable to the Plaintiffs for any of the back pay, damages, costs or attorneys' fees sought.
- The Court has allowed the lawsuit to be conditionally certified as a collective action under the FLSA on behalf of certain current and former hourly delivery drivers.
- The Court has not decided whether Defendants did anything wrong or are responsible for payment of any alleged unpaid monies. There is no money available now and no

guarantee there will be. However, your legal rights are affected, and you have a choice to make now:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

ASK TO BE INCLUDED	<p>Participate in this lawsuit. Give up right to sue separately.</p> <p>By joining, you have the possibility of receiving money if there is a resolution of this matter, either following a successful trial in which Plaintiffs prevail, or by settlement. But, you give up any rights to sue Defendants separately about the same legal claim in this lawsuit.</p>
DO NOTHING	<p>Do nothing. You will not participate in this lawsuit or share in the result of any resolution, and you will retain the right to sue separately.</p> <p>If you do nothing you will not receive any money if the Plaintiffs win the lawsuit or obtain a settlement. But, you keep any rights to sue Defendants separately about the same legal claims in this lawsuit.</p>

- Your options are further explained in this notice.

BASIC INFORMATION

1. Why did I get this Notice?

The purpose of this Notice is to inform you of the existence of a collective action lawsuit under the FLSA in which the Plaintiffs allege you are “similarly situated” to them. It also explains what you need to do to participate, or not participate, and how your rights may be affected.

2. What is a collective action and who is involved?

In a FLSA collective action lawsuit, one or more people sue on behalf of other people who they allege have similar FLSA claims. This lawsuit was initially filed on July 11, 2017

against the Defendants in the United States District Court for the Western District of New York. Specifically, the named Plaintiffs (in this case, Skyler Lusk, Tia Council, Viktoria O'Brien, and Justin Byroad) allege they and other delivery drivers who work at Insomnia Cookies were not paid proper minimum wage rate, not reimbursed for vehicle and/or other related costs, and/or not compensated properly for overtime hours.

3. What does the lawsuit complain about?

Plaintiffs allege that Defendants violated the FLSA by failing to pay hourly delivery drivers adequate minimum wages, reimbursement for mileage and other related expenses, and improperly calculating their overtime rate of pay. The lawsuit is seeking back pay and liquidated damages from Defendants, as well as costs and attorneys' fees.

4. How do Defendants answer?

Defendants deny all of the Plaintiffs' allegations of wrongdoing and deny that they are liable to the Plaintiffs for any of the back pay, damages, costs or attorneys' fees sought. Defendants maintain that Plaintiffs and all others they claim are "similarly situated" were paid properly for all hours of work for Insomnia Cookies.

5. Has the Court decided who is right?

No. The Court has taken no position in this case regarding the merits of the Plaintiffs' claims or the Defendants' defenses.

YOUR RIGHTS AND OPTIONS

6. How do I join?

You may join this case (that is, you may "opt-in") by completing and mailing the attached "Consent to Become Party Plaintiff" form to the Plaintiffs' counsel at the following address:

Jessica L. Lukasiewicz, Esq.
THOMAS & SOLOMON LLP
693 East Avenue
Rochester, NY 14607
1-877-272-4066

The form must be sent to the Plaintiffs' counsel so that it is returned or post-marked by no later than **[insert deadline 60 days after mailing]**. If you fail to return or post-mark the Consent form by the deadline, you may not be able to participate in this lawsuit.

7. What if I do nothing?

If you do not join the lawsuit, you will not be part of the FLSA case in any way and will not be bound by or affected by the result (whether favorable or unfavorable). Your decision not to join this case will not affect your right to bring a similar case on your own at a future time

within the applicable statutory period under the FLSA. However, claims under the Fair Labor Standards Act must be brought within 2 years of the date the claim accrues, unless the employer's violation of the law was "willful," in which case the claim must be brought within 3 years.

8. Can the Company retaliate against me for joining the lawsuit?

The FLSA prohibits Defendants from discharging or in any other manner retaliating against you because you decided to join the case.

9. Do I have to do anything once I join?

Yes, but the lawyers will handle most of the presentation of the case. From time-to-time, your lawyers may ask you for information which you would need to provide. You must preserve all documentation in your possession relating to your employment with Insomnia Cookies and your use of a vehicle to make deliveries for Insomnia Cookies. While this suit is proceeding, you also may be required to respond to written questions, participate in depositions (i.e. answer questions from Defendants' attorneys under oath prior to trial), and/or testify under oath in court. If you are asked to give information, Plaintiffs' counsel will work with you so that the process is as convenient for you as possible.

THE LAWYERS REPRESENTING YOU

10. Do I have a lawyer in this case?

The law firm Thomas & Solomon LLP is the counsel representing the named and opt-in Plaintiffs in this action.

Unless you choose another lawyer (see below) these attorneys will represent you in the action if you choose to join.

11. Should I get my own lawyer?

Thomas & Solomon LLP represents the Plaintiffs and current opt-in Plaintiffs, and is prepared to represent you in this case if you choose. However, you can join this lawsuit by counsel of your own choosing. If you do so, you must post-mark an "opt-in" consent form by **[insert deadline 60 days after mailing.]**

12. How will the lawyers be paid?

If the attorneys get money or benefits for the Plaintiffs, they will ask the Court for fees and expenses. You won't have to pay these fees and expenses. If the Court grants the Plaintiffs' lawyers' request, the fees and expenses would be either deducted from any money obtained for the Plaintiffs or paid separately by Defendants.

If the Plaintiffs obtain money or benefits as a result of the trial or a settlement, you will be notified

about how to participate. We do not know how long this will take.

GETTING MORE INFORMATION

13. Are more details available?

Further information about this Notice, the deadline for returning a Consent to Become Party Plaintiff, or questions concerning this lawsuit may be obtained by writing or phoning the named Plaintiffs' counsel at:

Jessica L. Lukasiewicz, Esq.
THOMAS & SOLOMON LLP
693 East Avenue
Rochester, NY 14607
1-877-272-4066

[E-mail: ContactUs@theemploymentattorneys.com](mailto:ContactUs@theemploymentattorneys.com)

PLEASE DO NOT CONTACT THE COURT

14. Who represents the defendants?

The attorneys for Defendants are:

William J. Anthony, Noel P. Tripp, and Douglas J. Klein,
Jackson Lewis P.C.
677 Broadway, 9th Floor
Albany, NY 12207
518-512-8700
Douglas.Klein@jacksonlewis.com

If you decide to join this case, you should not contact the Defendants' attorneys directly yourself.

CONSENT TO BECOME A PARTY PLAINTIFF

I consent to become an opt-in plaintiff in the above captioned action, *Lusk, et al. v. Serve U Brands, et al*, Western District of New York Case No. 17-cv-6451 (the “Lawsuit”) for the claims described in the Notice I received.

I select THOMAS & SOLOMON LLP to represent me in the Lawsuit.

I authorize Plaintiffs or Plaintiffs’ counsel to file this Consent with the Clerk of the Court. I hereby further authorize and designate the Plaintiffs to act on my behalf concerning the Lawsuit, including litigation, factual investigation, consideration of settlement and attorneys’ fees and costs, and all other matters pertaining to this lawsuit, including specifically entering into a binding settlement agreement related to my claims.

Signature

Date

Print Full Legal Name

INFORMATION SHEET

Please keep us informed of any changes to your contact information



(PLEASE FILL OUT COMPLETELY)

Name _____
First Name Last Name

Home Phone (____) - ____ - ____

Address _____

Cell Phone (____) - ____ - ____

City _____ State _____ Zip Code _____

E-Mail Address _____

Social Security Number

X	X	X	—	X	X	—				
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Any personal identification information that you provide to us will only be used to protect your interests and the class members' in this lawsuit.

I am/was employed by Insomnia Cookies:

		/ /	/ /
Work Location	Job Title	Start Date	End Date
		/ /	/ /
Work Location	Job Title	Start Date	End Date
		/ /	/ /
Work Location	Job Title	Start Date	End Date
		/ /	/ /
Work Location	Job Title	Start Date	End Date

Please note that any attorney-client relationship with you will start only if we submit your Consent Form in court seeking payment of unpaid wages and other claims arising out of wage and hour law.

PLEASE RETURN TO Thomas & Solomon LLP
 693 East Avenue
 Rochester, New York 14607

If you have any additional questions, feel free to contact the law firm above at
www.theemploymentattorneys.com (website) ContactUs@theemploymentattorneys.com (e-mail)
 1.877.272.4066 (telephone M-F 9:00A—5:30P ET) 1.877.272.0574 (facsimile)

Thomas & Solomon LLP
THE EMPLOYMENT ATTORNEYS

693 East Avenue • Rochester, NY 14607

First Name Last Name

Address 1 Address 2

City, State Zip Code

Thomas & Solomon LLP
THE EMPLOYMENT ATTORNEYS

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